

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of Nancy M. S. Stover	: : : : : : :	AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision of a Determination or a Refund of Personal Income Tax under Article 22 of the Tax Law for the Year 1977.		

State of New York
County of Albany

David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of May, 1983, he served the within notice of Decision by certified mail upon Nancy M. S. Stover, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Nancy M. S. Stover
c/o Meyer Handelman Co.
80 Pine St.
New York, NY 10005

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
6th day of May, 1983.

David Parchuck

James C. Hegelund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Nancy M. S. Stover :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Personal Income :
Tax under Article 22 of the Tax Law for the Year :
1977. :

State of New York
County of Albany

David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of May, 1983, he served the within notice of Decision by certified mail upon Paul Schumann the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Paul Schumann
Cahill, Gordon & Reindel
80 Pine St.
New York, NY 10005

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
6th day of May, 1983.

David Parchuck

Annice Hagelund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

May 6, 1983

Nancy M. S. Stover
c/o Meyer Handelman Co.
80 Pine St.
New York, NY 10005

Dear Ms. Stover:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Paul Schumann
Cahill, Gordon & Reindel
80 Pine St.
New York, NY 10005
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
NANCY M. S. STOVER	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1977.	:	

Petitioner, Nancy M. S. Stover, c/o Meyer Handelman Co., 80 Pine Street, New York, New York 10005, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1977 (File No. 29236).

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 14, 1982 at 1:15 P.M. Petitioner appeared by Cahill, Gordon & Reindel (Paul Schumann, Esq., of counsel). The Audit Division appeared by Paul B. Coburn, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUES

I. Whether petitioner may claim a credit under section 620 of the Tax Law for taxes paid to the State of Minnesota.

II. Whether the income which was subject to the Minnesota tax was from sources within Minnesota.

FINDINGS OF FACT

1. Petitioner, Nancy M. S. Stover, and her husband, filed a combined New York State Income Tax Resident Return for the year 1977. On this return, petitioner claimed a credit for income taxes paid to the State of Minnesota in the amount of \$4,377.00.

2. Petitioner filed a Minnesota Individual Income Tax return for the year 1977. In conjunction with this return, petitioner filed a Minnesota "Computation Of Minimum Tax" form for the year 1977 which showed a Minnesota minimum tax liability of \$4,377.00. Petitioner paid this amount of tax.

3. On December 31, 1979, the Audit Division issued a Notice of Deficiency accompanied by an explanatory Statement of Audit Changes which asserted a deficiency of personal income tax for the year 1977. The Statement of Audit Changes proposed that "minimum income tax paid to the State of Minnesota does not qualify as a resident tax credit under the provisions of Section 620 of the New York State Tax Law." The Notice of Deficiency asserted a tax due of \$4,114.38, plus interest of \$598.82, for a total due of \$4,713.20.

4. Petitioner was a resident of New York during the year in issue.

5. Petitioner was the beneficiary of two trusts. One trust was a revocable trust established by petitioner in 1966 for her own benefit. The other trust was an irrevocable trust established by petitioner's mother in 1941 for petitioner's benefit. Each trust owned marketable securities and real property in Minnesota. The property of each trust was leased to the Eveleth Taconite Company for mining of taconite ore.

6. Taconite is a low-grade iron ore which is beneficiated into a product used for the making of steel.

7. Each trust receives its income primarily from royalties arising from the shipments of taconite under a lease to Eveleth Taconite Company. The royalties are determined by a formula which is based on the iron content of the product produced and the market price of Lake Erie non-Bessemer ore.

8. These royalties were reported by the trusts on their federal fiduciary income tax returns for 1977 as long-term capital gains. The returns for 1977 were examined by the Internal Revenue Service and accepted as filed.

CONCLUSIONS OF LAW

A. That, during the year in issue, section 620(a) of the Tax Law provided:

"A resident shall be allowed a credit against the tax otherwise due under this article for any income tax imposed for the taxable year by another state of the United States...upon income both derived therefrom and subject to tax under this article."

B. That the Minnesota tax is an income tax within the meaning and intent of section 620 of the Tax Law and 20 NYCRR 121.1.

C. That a credit under section 620 of the Tax Law "...is allowable only for the portion of the other tax applicable to income derived from sources within the other taxing jurisdiction." (20 NYCRR 121.1.) That the income consisting of royalties from the sale of taconite ore in the State of Minnesota that was subject to the Minnesota minimum income tax was "income derived from sources within the other taxing jurisdiction" within the meaning and intent of section 620(a) of the Tax Law and 20 NYCRR 121.1 and 20 NYCRR 121.3(d). (See generally, Matter of Samuel Levine and Mildred Levine, State Tax Commission, September 28, 1979.


D. That petitioner properly claimed a resident tax credit for the minimum income tax payable to the State of Minnesota.

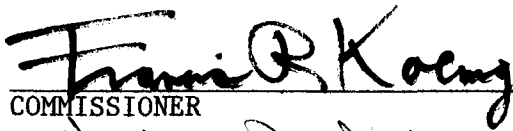
E. That the petition of Nancy M. S. Stover is hereby granted and the Notice of Deficiency is cancelled.

DATED: Albany, New York

MAY 06 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER